

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**December 18, 2002**

DIVISION ONE

Court convened at 9:00 a.m.

Present: Spencer, P.J., Ortega, J., Vogel (Miriam A.), J., Mallano, J. and S. Beaux,  
Deputy Clerk.

Each of the following:

B154001 c/w B158012 People v. Stockdale  
B154160 People v. Perez  
B154258 People v. Noah O.  
B154140 DCFS v. Manalou B.  
B155476 People v. Pollard  
B156324 People v. Martin  
B157126 DCFS v. Marco O.  
B157409 DCFS v. Cindy H.  
B157800 Hollingsworth v. Kalmon, et al.  
B160202 People v. Casillas

Argument waived, cause submitted.

B156049     Alexander  
              v.  
              Union Rescue Mission  
              Estate of Eugene, deceased.

Merits:

Argued by Stephen M. Lowe for appellant and no appearance for  
respondent. Cause submitted.

DIVISION ONE (Continued)

B154333     People  
              v.  
              Dotson

Merits:  
Argued by Edward J. Haggerty for appellant and by Alene M. Games,  
Deputy Attorney General for respondent. Cause submitted.

B154585     Castellani  
              v.  
              21st Century Insurance Co.

Merits:  
Argued by Brian J. Hefferman for appellant and by David S. Ettinger for  
respondent. Cause submitted.

B156213     Kekel  
              v.  
              Manson Construction Co.

Merits:  
Argued by Joseph N. Mirkovich for respondent. Appellant waived oral  
argument. Cause submitted.

B152287     Weinbaum, et al.  
              v.  
              Goldfarb, Whitman & Cohen, et al.

Merits:  
Argued by David R. Haberbush for appellants and by Scott H. Jacobs for  
respondents Goldfarb, Whitman & Cohen, et al. Cause submitted.

B157202     Elyaoudayan  
              v.  
              Hoffman, et al.

Merits:  
Argued by Tony Forberg for respondents. Appellant waived oral argument.  
Cause submitted.

DIVISION ONE (Continued)

B153422     People  
              v.  
              Contreras

Merits:  
Argued by Joseph Gutierrez for appellant and by Scott Taryle, Deputy Attorney General for respondent. Cause submitted.

Mallano, J. leaves the bench.

B154472     People  
              v.  
              Rutledge

Merits:  
Argued by J. David Nick for appellant and by Elaine F. Tumonis, Deputy Attorney General for respondent. Cause submitted.

Mallano, J. returns to the bench.

Vogel, J. leaves the bench.

B154626     Martin et al.  
              v.  
              Track Mortgage Group, Inc. et al.

Merits:  
Argued by Jens B. Koepke for appellants and by Aviv L. Tuchman for respondents. Cause submitted.

Vogel, J. returns to the bench.

B151031     Katnick Corp. etc.  
              v.  
              Andra et al.

Merits:  
Argued by Don Erickson for appellant and by Alan R. Block for respondents. Cause submitted.

DIVISION ONE (Continued)

B162671 Simone L.  
v.  
Superior Court, Los Angeles County  
(Dept of Children & Family Services, r.p.i.)

Merits:  
Argued by Simone L., petitioner in propria persona and by Jerry M. Curtis,  
Deputy County Counsel, for real party in interest. Cause submitted.

B160942 Nutrition Now Inc., et al.  
v.  
Superior Court, Los Angeles County  
(Capseals, Inc. et al., r.p.i.)

Merits:  
Argued by Steve Johnson for real party in interest Pacific Gain, by Mario  
R. Rivera for real parties in interest Capsseals Inc. and by William L.  
Fiedman for petitioner Nutrition Now. Cause submitted.

Ortega, J. leaves the bench.

B154491 Archuleta  
v.  
American Airlines, Inc. et al.

Merits:  
Argued by Maurice Chenier for respondent and by Gary R. Siniscalco for  
appellants. Cause submitted.

Ortega, J. returns to the bench.

Vogel, J. leaves the bench.

B155930 Los Angeles County, D.C.S.  
v.  
Doretha B.

Merits:  
Argued by Steven Schatz for appellant and by Doraine F. Meyer, Deputy  
County Counsel for respondent. Cause submitted.

DIVISION ONE (Continued)

Vogel, J. returns to the bench.

Mallano, J. leaves the bench.

B161305     Discover Bank  
              v.  
              Superior Court, Los Angeles County  
              (Boehr, r.p.i.)

Merits:

Argued by Brian R. Strange for real party in interest and by Jeffrey S. Davidson for petitioner. Cause submitted.

Mallano, J. returns to the bench.

Ortega, J. leaves the bench.

B148488     Fox  
              v.  
              Lichter, Grossman Nichols & Sadler, Inc.

Merits:

Argued by James L. Goldman for appellant and by Roy G. Weatherup for respondent. Cause submitted.

Court adjourned.

DIVISION TWO

B152840     Mabel L. Murphy, et al.     (Not for Publication)  
              Donnie Isaac, et al.  
              v.  
              Lincoln Memorial Park, Inc.

The judgment of nonsuit is affirmed. The parties are ordered to bear their own costs of appeal.

Doi Todd, J.

We concur:    Boren, P.J.  
                      Nott, J.

December 18, 2002 (Continued)

## DIVISION TWO (Continued)

B141535 Robert Etebari, et. al. (Not for Publication)  
v.  
Jana K. Banks, et. al.

Accordingly, we affirm the trial court's order. Costs are awarded to respondents on appeal.

Doi Todd, J.

We concur: Nott, Acting P.J.  
Ashmann-Gerst, J.

(Certified for Publication)

B139066      The People ex rel. Bill Lockyer, as Attorney General, etc.  
v.  
Fremont Life Insurance Company

The judgment is affirmed. Respondent(s) to recover costs.

Doi Todd, J.

We concur: Boren, P.J.  
Ashmann-Gerst, J.

B152939 People  
v.  
Lewis

Filed order denying petition for rehearing.

## DIVISION THREE

B153662      Higuera      (Not for Publication)  
v.  
Civil Service Commission of Los Angeles County

The judgment is affirmed. Costs on appeal are awarded to the respondent.

Kitching, J.

We concur: Klein, P.J.  
Aldrich, J.

December 18, 2002 (Continued)

DIVISION THREE (Continued)

B151713      Light, et al.      (Not for Publication)  
v.  
City of Hawthorne, et al.

The order and judgment granting defendants' motion for summary judgment is affirmed. Each party to bear its own costs on appeal.

Kitching, J.

We concur:   Croskey, Acting P.J.  
                  Aldrich, J.

## DIVISION FOUR

B158060      Lisa Petsco      (Not for Publication)  
v.  
Ralphs Grocery Company

The judgment is affirmed. Respondent shall have her costs on appeal.

Hastings, J.

We concur: Vogel (C.S.), P.J.  
Epstein, J.

B155993      Yates      (Not for Publication)  
v.  
General Motors Corporation et al.

The judgment of dismissal is reversed. The matter is remanded to the trial court to reconsider the sanctions to be imposed. Costs on appeal are awarded to appellant.

Hastings, J.

We concur: Epstein, Acting P.J.  
Curry, J.

## December 18, 2002 (Continued)

## DIVISION FOUR (Continued)

B156901 Chang (Not for Publication)

$$\mathbf{V}_i$$

# Formost Power Equipment Corporation

The judgment is affirmed. Costs are awarded to respondents.

Hastings, J.

We concur: Epstein, Acting P.J.

Curry, J.

B154396 Soloway, et al. (Not for Publication)

 $\mathbf{V}_i$ 

Mailbu Highlands 30, Ltd., et al.

The judgment is affirmed.

Vogel (C.S.), P.J.

We concur: Epstein, J.

Curry, J.

B151357      Niroomfar      (Not for Publication)

$$\mathbf{V}_i$$

SAS Textile, Inc.

The order granting costs and attorney fees to SAS is reversed. The case is remanded for further proceedings on Sigari's request for attorney fees and costs. Appellant is to recover his costs on appeal.

Curry, J.

We concur:   Vogel (C.S.), P.J.

Hastings, J.

B157651 People (Not for Publication)

V.

Rogers

The judgment is affirmed.

Curry, J.

We concur:   Vogel (C.S.), P.J.

Hastings, J.



## December 18, 2002 (Continued)

## DIVISION FOUR (Continued)

[illegible]

The judgment is affirmed.

Epstein, J.

We concur: Vogel (C.S.), P.J.  
Curry, J.

B160989 People (Not for Publication)  
v.  
Butler

The judgment is affirmed.

Hastings, J.

We concur: Epstein, Acting P.J.  
Curry, J.

B125242      Bravo  
v.  
Giblin

Filed order modifying opinion. Petitions for rehearing are denied. (Change in judgment)

DIVISION SIX

B160394 Kelly R. (Not for Publication)  
v.

Santa Barbara Superior Court  
(Santa Barbara County Department of Social Services, R.P.I.)

The judgment (order terminating appellant's parental rights) is affirmed.

Yegan, J.

We concur:    Gilbert, P.J.  
                         Coffee, J.

December 18, 2002 (Continued)

## DIVISION SIX (Continued)

B156403      People                                  (Not for Publication)  
v.  
Plascencia and Garcia

With respect to appellant Plascencia, the clerk of the superior court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment staying pursuant to section 654 the terms imposed on count 3 (robbery) and count 5 (attempted extortion) together with all enhancements imposed on those counts, and striking the section 12022, subdivision (b)(1) enhancement on counts 2, 4, 5 and 6. The total term in state prison is thereby reduced from 18 years to 17 years. As so modified, the judgment as to appellant Plascencia is affirmed.

With respect to appellant García, the clerk of the superior court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment staying pursuant to section 654 the terms imposed on count 3 (robbery) and count 5 (attempted extortion) together with all enhancements imposed on those counts. As so modified, the judgment as to appellant Garcia is affirmed.

Yegan, J.

We concur: Gilbert, P.J.  
Perren, J.

B157339      Shneider      (Not for Publication)  
v.  
Gourley

The judgment denying the petition for writ of mandate is affirmed. Costs on appeal are awarded to respondent.

Yegan, J.

We concur:   Gilbert, P.J.  
                      Coffee, J.

## DIVISION SEVEN

B152420      People                                  (Certified for Partial Publication)  
v.  
McGee

The judgment is reversed, and the matter is remanded to allow the trial court to conduct a new hearing on the *Wheeler* issues. Initially, the court must determine whether it can adequately address the issues at this stage. If not, a retrial is required. If the court can address the issues, it must first consider the exclusion of all six African-American prospective jurors included in McGee's second *Wheeler* motion and determine whether the prosecutor's reasons for excusing each of those jurors are constitutionally valid. If the court determines the prosecutor's reasons for excusing the six jurors are constitutionally valid, it must then address, seriatim, the issue whether a prima facie case has been established as to the third motion and, if so, whether the prosecutor's explanations for exercising the challenges are constitutionally valid, and then address those same issues as to the fourth motion.

If the trial court grants any of McGee's *Wheeler* motions, retrial is required. If the court denies all *Wheeler* motions after the hearing, the judgment shall be reinstated and corrected to delete the parole revocation fine.

Perluss, J.

We concur: Johnson, Acting P.J.  
Woods, J.

B157849 Marzec (Not for Publication)  
v.  
Arter & Hadden

The order denying the petition to compel arbitration is reversed,. The matter is remanded to the trial court with directions to enter a new and different order granting the petition to compel arbitration and for further proceedings not inconsistent with this opinion. A&H is to recover its costs on appeal.

Perluss, J.

I concur:       Johnson, Acting P.J.

December 18, 2002 (Continued)

## DIVISION SEVEN (Continued)

B155189 People (Not for Publication)  
v.  
DeLeon

The judgment is affirmed.

Perluss, J.

We concur: Johnson, Acting P.J.  
Munoz, J. (Assigned)

DIVISION EIGHT

12-18-02

118121-03

THE HONORABLE **MIRIAM A VOGEL**, Associate Justice of the Court of Appeal, Second Appellate District, Division One, is hereby assigned to assist the Court of Appeal, Second Appellate District, **Division EIGHT**, as a justice thereof, on the following date(s):

**February 27, 2003**

and until completion and disposition of all causes and matters submitted pursuant to this assignment including, in necessary by reason of a vacancy or disqualification of a Court of Appeal justice, all petitions for rehearing arising out of such causes and matters.

This assignment does not extend to any matter in which the panel would be composed of two justices pro tempore.

December 17, 2002  
Ronald M George  
Chief Justice of California and  
Chairperson of the Judicial council